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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1965

No. 16

SGT. JESSE E. SNAPP,
Petitioner,

versus

HONORABLE W. D. NEAL, State Auditor, and
HONORABLE JOE T. PATTERSON,
Attorney General,
both of the State of Mississippi,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIIPI

ORIGINAL BRIEF FOR PETITIONER, SGT. JESSE E. SNAPP

CITATION OF OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is reported in 164 So. 2d 752 and is set forth in the record at pp. 46-61.

JURISDICTION

The judgment of the Supreme Court of Mississippi is dated June 1, 1964 and is to be found at pp. 62-63 of the record. The Petition for Certiorari was filed in this Honorable Court on October 28, 1964; and was granted on March 8, 1965 (R. 65). The court has jurisdiction un-

der 28 U.S.C. 1257(3) in that petitioner claims that certain statutes of the State of Mississippi (§9877 - 9879; and § 10007-51—10007-58, Miss. Code Recompiled) as applied in this case, are repugnant to a law of the United States, to wit: 50 U.S.C. App. 574 (§514 of the Soldiers & Sailors Civil Relief Act of 1940 as amended.) For text of Mississippi Statutes see Appendix B hereof; for text of U. S. Statute, see Appendix A hereof.

STATUTES INVOLVED

In addition to the Federal and Mississippi statutes referred to in the jurisdictional statement, a South Carolina statute involved is to be found in Appendix C hereof.

QUESTIONS PRESENTED

1. Does the Soldiers' & Sailors' Civil Relief Act of 1940 as Amended (50 U.S.C. App. 574) prohibit a state from imposing an ad valorem tax on personal property under the following circumstances:

A member of the Armed Services on active duty in the taxing state, which is not his residence, owns a house trailer located in the taxing state which trailer however, has never moved or used the State highways during the taxable year.

2. Alternatively, is a house trailer a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, under the circumstances stated in paragraph 1 hereof?

3. If a house trailer is a motor vehicle within the meaning of the second paragraph of 50 U.S.C. App. 574, then does the proviso of the second paragraph apply

when the State of the taxpayer's residence does not require a payment of a tax of any sort unless the vehicle operates or moves on the highways of that State?

4. Does the decision of the Supreme Court of Mississippi in this case either misconstrue, misinterpret or ignore the basic reasoning of *Dameron v. Brodhead*, 345 U.S. 322 (1953)?

STATEMENT OF THE CASE

1. *Statement of Facts*

Since October 29, 1951 petitioner has continuously been a member of the Armed Services, to wit: the United States Air Force (R. 12-13). On November 1, 1962 he was stationed at Crystal Springs, Copiah County, Mississippi, and had been stationed there since October 28, 1961 (R. 13). His domicile was at Pacelot, South Carolina, and had been so since prior to his entry in the Service; he was a registered voter there, had the intention of returning to live there, and never intended to lose his South Carolina domicile and become a domiciliary of Mississippi (R. 13). On November 1, 1962 he was physically present and living at Crystal Springs, Mississippi, solely by reason of military orders which made him a member of the permanent Air Force party at Crystal Springs Air Force Station, Copiah County, Mississippi (R. 13).

On May 16, 1959 petitioner, who was then stationed at Greenville Air Force Base, Mississippi, purchased a house trailer from a dealer in Greenville, Mississippi; the purchase price was $5,330.00 and petitioner paid the Mississippi sales tax on this transaction; the trailer

was moved for petitioner by the vendor to a location near Greenville, Mississippi, where it remained until petitioner was transferred by military orders to Crystal Springs Air Force Station; at that time the trailer was transported from Greenville to Crystal Springs by a commercial mover, using Mississippi highways; (R. 25). Upon arrival at Crystal Springs, on October 28, 1961, the trailer was parked at the Sojourner's Trailer Court, a privately owned property, where it was placed on concrete blocks and was connected by pipes, hoses and wires to water, sewerage and electrical facilities. (R. 14). It was never moved on the highways of Mississippi on any date pertinent to this case (R. 25). The trailer never was self-propelled at any time (R.14).

The trailer was in the position, described above, on November 1, 1962 which is the critical tax date under the Mississippi law involved (R. 14 and paragraph 4 of Appendix B). On December 15, 1962 the Sheriff and Tax Collector of Copiah County issued a notice of assessment to petitioner stating that petitioner's house trailer had been assessed and levied upon for taxes which had become due and payable on November 1, 1962 and became delinquent thirty days thereafter. (R. 16-17). This notice also advised petitioner that unless the taxes claimed were paid by January 1, 1962 there would be an addition of 25% for damages, plus interest and costs and that the trailer would be sold for the taxes et cetera on January 28, 1963 unless paid. (R. 17). As a result of this notice and warning petitioner paid the tax on December 28, 1962 (R. 14) but did so under protest. (R. 21). A photocopy of the bill and receipt for these taxes, reproduced at p. 21 of the record, shows that the State and County Tax was $24.50 and

that the Municipal Tax was $11.50 or a total of $36.00 plus a registration fee of $2.50, or a total of $38.50. This bill and receipt also shows that the State, County and Municipal tax were ad valorem taxes since they were calculated upon a percentage or rate of value. (R. 21).

2. *Proceedings Below*

On February 6, 1963, petitioner, proceeding under Mississippi law, filed an application for a refund with the respondent, W. D. Neal, Auditor of Public Accounts, (R. 12-15) to which he attached the Sheriff's assessment notice (R. 16-17) and a memo in support of his application (R. 17-20).

Petitioner's application was forwarded by respondent Neal to respondent Joe T. Patterson, Attorney General of the State of Mississippi, for his approval or disapproval and there resulted some correspondence, which is contained in the record between pages 22-39 thereof. The ultimate result was a denial of the application for a refund on April 5, 1963 (R. 39). On June 26, 1963 petitioner filed a petition for appeal and review in the Chancery Court of Copiah County, Mississippi (R. 2-3) and that court ordered respondent Neal to transmit all papers and documents relative to the application (R. 4). Respondent Neal transmitted all papers under his certificate dated July 12, 1963 (R. 7). On August 13, 1963 the Chancery Court of Copiah County affirmed the denial of the application for the refund. (R. 40). An appeal was taken to the Supreme Court of Mississippi on October 31, 1963 (R. 41) and the latter court rendered its opinion and judgment affirming the judgment of the Chancery Court of Copiah County, Mississippi, on June 1, 1964 (R. 46-63).

When petitioner filed his application for a refund with the State Auditor he invoked the immunity of the Soldiers' & Sailors' Civil Relief Act, 50 U.S.C. App. 574 (See paragraph X of his application at R. 15); and he also invoked this immunity in the State courts [See paragraph 3 of Petition for Appeal & Review, (R. 2) and Opinion of the Supreme Court of Mississippi, (R. 46-61)].

SUMMARY OF ARGUMENT

Section 574 of Title 50 U.S.C. App. (Soldiers' & Sailors' Civil Relief Act) prohibits an ad valorem property tax imposed by Mississippi upon a house trailer owned by a serviceman under the facts of this case.

POINT I

The history of the Act, including its several amendments, shows that Congress intended that a liberal interpretation in favor of immunity from taxation be given to Section 574. This Court followed this liberal view in *Dameron v. Brodhead*. Section 574(2) provides that motor vehicles are specifically within the immunity unless the proviso in §574(2)(b) completely annuls the immunity when its terms are not met. The proviso can be and should be read so that the only immunity lost is from "license, fees and excises" and not from ad valorem property taxes. The intent of Congress, in the proviso, was solely to set up a system of police control over highly mobile personal property, to wit: motor vehicles, and the provision was never intended to affect the immunity from ad valorem property taxes. Finally, if there is any doubt about the Congressional intent, it can and should be resolved in favor of the

serviceman because of the history of liberality manifested by Congress in the original version of Section 574 and in the subsequent amendments of 1942, 1944 and 1962.

POINT II.

Alternatively, a house trailer, as factually described in this case, is not a motor vehicle within the meaning of the Federal Statute. The Federal Statute must control and the Mississippi Legislature cannot define a house trailer to be a motor vehicle within the meaning of the Federal Statute, if the Federal Statute cannot itself be read to include house trailers. While Section 574 does not define the term "motor vehicle" it is appropriate to look to definitions of that term in other Federal Statutes and in the jurisprudence generally. The element of mobility and movement on the public highways and roads is an essential element in all such definitions. This essential element is lacking as to the house trailer in this case.

POINT III.

Alternatively, if a house trailer is a motor vehicle within the meaning of Sec. 574 (2), then the proviso does not apply in this case since South Carolina, the domicile State, required no payment of tax of any sort unless the trailer operates or moves on the highways of the State or the trailer is physically present within the State and is occupied as living accommodations within that jurisdiction. There being no *requirement* of a "license, fee or excise" on petitioner's house trailer by his home State, it cannot be said that he has *failed* to pay the tax to that State.

POINT IV.

Finally, the Supreme Court of Mississippi has misconstrued, misinterpreted or ignored the reasoning of this Court in *Dameron v. Brodhead* in that it has given a narrow construction to Section 574, and has based its decision on the requirement of double taxation, which latter principle was repudiated in *Dameron v. Brodhead.*

ARGUMENT

POINT I

AN ANALYSIS OF SECTION 574, ITS HISTORY AND THE INTERPRETATION IT RECEIVED IN DAMERON V. BRODHEAD SHOWS THAT IT PROHIBITS THE IMPOSITION OF THE MISSISSIPPI TAX INVOLVED IN THIS CASE.

A *Analysis of Sec. 574.*

1. Section 574 clearly sets forth that when a person in the military service is absent from his state of residence in compliance with military orders, no state other that the state of his domicile may impose a tax on his personal property.

2. Section 574 reaches this result by declaring that such personal property does not have a "situs" in the host state for purposes of taxation. See Sec. 574 (1).

3. Motor vehicles are specifically included in the term personal property. See Sec. 574 (2) (a).

4. With reference to motor vehicles, all taxes, in-

cluding licenses, fees and excises are specifically within the immunity; but a proviso is added, reading as follows:

> "Provided, that the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

B. *History of Section 574.*

1. Prior to 1942, the Soldiers' & Sailors' Civil Relief Act (Laws of 1940, c. 888, 54 Stat 1178) did not contain the immunity concept set forth in the present Sec. 574. The only tax relief granted to a serviceman was that his property could not be sold for taxes falling due prior to or during his period of military service. (See Sec. 500, c. 888, Laws of 1940, 54 Stat. 1178, now 50 U.S.C. App. Sec. 560).

2. In 1942 the Act was amended by the addition of an entirely new section (Sec. 514, c. 581, Laws of 1942, 56 Stat 777; see the full text in Appendix G) which, for the first time, gave relief to the serviceman from taxes on his property solely by reason of his being absent from his home state and being present under military orders in the taxing state. Although it was intended that the amendment would apply to taxes on personal property, the results among the various states were not clear. See House Report, No. 1514, 78th Congress, 2d Session, pp. 1-2, Appendix F, pp. 53-54 hereof.

3. In 1944 to clarify this situation and to remove all doubt Congress again amended Sec. 574. (See Appendix

G, pp. 55-57. This clarification took several forms (all, incidentally, showing a Congressional intent toward a broader, more liberal approach with reference to the application of the immunity):

(1) The 1944 Act added the word "personal" before the word "property" wherever it appeared.

(2) The 1944 Act adopted a somewhat different approach towards the problem. Initially, the 1942 Act (see Appendix G) approached the question of immunity by stating that a serviceman did not either acquire a new domicile or lose an old one by reason of military assignments. However, this did not adequately meet the "actual physical situs" problem and resulted in taxation by some host states (See Appendix F). The 1944 Act met the "situs" problem head on by changing the approach from the acquisition or loss of domicile concept to a flat statement that there would not thereafter be *any* situs in the host state of property in physical possession of a serviceman in a host state, if he and his property were there solely because of military orders.

(3) In the 1944 Act, Congress, for the first time, addressed itself to the status of motor vehicles as personal property and declared that they *were* included in the general exemption (see Paragraph (2) (a), Sec. 574; and that as to motor vehicles, the taxation from which immunity was granted "shall include but not be limited to licenses, fees and excises" required by the home state.

4. In 1962, Section 574 was again amended to add a sentence making it clear that the *only* situs which any personal property could have for tax purposes under

any circumstances was the domicile of the serviceman. (See Sec. 574, as amended October 9, 1962, 76 Stat. 768, text in Appendix A).

C. *Interpretation of* §574.

1. The problem which gave rise to the policy announced in Section 574 was the possible subjection of military personnel serving in several taxing jurisdictions through no choice of their own to the taxation of their property by several states in the same calendar year. H. Rep. No. 2198, 77th Cong., 2d Sess., p. 6; H. Rep. No. 1514, 78th Cong., 2d Sess., p. 2 (See Appendix F). However, Congress did not limit its policy to situations of actual multiple taxation. This problem was considered in *Dameron v. Brodhead*, 345 U.S. 322, (1953), where the City of Denver, Colorado, had imposed a tax on the personal property of a United States Air Force officer stationed in Colorado and living in Denver, whose residence and domicile were in Louisiana. In rejecting the contention that the city could tax the officer's personal property because there was no danger of multiple taxation since Louisiana had imposed no taxes on the personal property of its residents, the Supreme Court of the United States explained that (p. 326) —

> "though the evils of potential multiple taxation may have given rise to this provision, *Congress appears to have chosen the broader technique of the statute carefully,* freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the sole right of taxation to the state of original residence whether or not that state ex-

ercised the right. Congress, manifestly, thought that compulsory presence in a state should not alter the benefits and burdens of our system of dual federalism during service with the armed forces." (Italics added).

2. The Supreme Court of the United States also considered the constitutionality of Section 574 in the *Dameron* case, and upheld it as being within the powers delegated to the Congress to wage war and to enact necessary and proper supplementary legislation. The Court also noted that Section 574 in no way affected the reserve powers of the states to tax, since the "statute merely states that the taxable domicile of servicemen shall not be changed by military assignments." 345 U.S. p. 325.

D. *Analysis of Mississippi Statutes.*

1. The purpose of the House Trailer Ad Valorem Tax Act, as stated in Section 10007-51 (Appendix B para. 4 infra) is — with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

2. The statute fixes a basic fee of $2.50 for registration of a house trailer but requires as a condition precedent for issuing a registration certificate that the ad valorem property tax be paid. Thus, the text of the statute on this point is as follows:

"At the time such registration is made, and

> before a registration certificate and label may be issued the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and 50/100 cents ($2.50), together with all ad valorem taxes due on said house trailer for the then fiscal year."

See §10007-53, par. 4, appendix B.

Thus, the amount of the registration fee does not vary depending upon the valuation of the vehicle while, of course, the property tax does. This taxing pattern is distinguishable from those in which there is a clear cut excise tax imposed for use of the highway, and the amount of the excise tax depends on the value of the motor vehicle. See *Ingels v. Riley*, 5 Cal. 2d 154, 53 P. 2d 939 (Calif. 1936). Mississippi makes no pretense that the property aspect of the tax in this case is anything other than an ad valorem property tax, separate and apart from the registration fee. The Supreme Court of Mississippi, in the opinion below, is in accord, for it states:

> "By stipulating expressly that the taxation should not be limited to privilege and excise taxes, it necessarily follows that the prohibited tax must include the only other general branch of taxation, that is, ad valorem." (R. 58)

3. Another section of the House Trailer Ad Valorem Tax Act, Section 10007-57, provides that the sheriff shall use, for the purpose of assessing and collecting ad valorem taxes on house trailers to which the Act applies, the assessed value of house trailers as set out

in Chapter 588, General Laws of Mississippi (1958), i.e. the Motor Vehicle Ad Valorem Tax Act. The 1958 Act requires that "Motor vehicles be assessed uniformly according to value * * *." (Section 10007-08) Another provision of the 1958 Act, Section 10007-10, directs the State Tax Commission, to prepare an assessment schedule of motor vehicles, as defined in the Act, which is to be used by the tax collector in assessing, calculating, and collecting ad valorem taxes. The Commission is authorized to use any method in preparing the schedule which, in its judgment, will tend to equalize the assessed value of property in this class with property in other classes in general, including references to the values of various makes, models, year of manufacture, and types of motor vehicles as adopted by a reputable nation-wide agency or association which regularly compiles and furnishes such information.

4. It is, therefore, clear that the House Trailer Ad Valorem Tax Act is concerned with the assessment and collection of ad valorem property taxes on house trailers, such as the petitioner's. Not only does the 1962 Act expressly deal with "ad valorem taxes" (e.g. Sections 10007-52, 10007-53, para. 4, Appendix B), but it also provides that the assessments are to be based upon value (Sections 10007-57, para. 4, Appendix B and 10007-08, para. 3, App. B). The petitioner's tax receipt indicates that his house trailer was valued for tax purposes at $460.00, that the state, county, and municipal tax rate was applied to this valuation, and that his total ad valorem taxes amounted to $36.00. (R. 21)

5. Finally, since Section 10007-53 of the 1962 Act, supra, requires "Any person owning, occupying, using, or having in his possession or control a house trailer"

to register it and pay ad valorem taxes on it, it is clear that the taxes in question are upon mere ownership and possession of property, irrespective of whether the highways are used. See opinion below at Page 58 of the record in this case.

E. *The Federal and State Statutes as applied to the facts of this case.*

1. It is clear that if the property involved were furniture and not a house trailer, the immunity would apply. Indeed even if the property were a motor vehicle pure and simple, i.e., an automobile, the Mississippi ad valorem tax on motor vehicles would not apply. See §10007-21 Miss. Laws Appendix B, para. 3 and the interpretation thereof in Appendix E herein. However, the House Trailer Ad Valorem Tax Act, does not contain a similar exemption.

2. Thus, if the proviso contained in §574 (2) (b) did not exist, the issue in this case would never have arisen. Mississippi contends that the effect of the proviso is that if its terms are not met (i.e., payment of all licenses, fees and excises required by the home state) the *entirety* of the immunity falls including immunity from ad valorem property taxes. Petitioner contends that the proviso is not so broad and sweeping and that its effect is to prevent *only* the claim of immunity from "licenses, fees & excises" imposed by the host state when such are required by the home state and have not been paid.

3. As a matter of semantics, the proviso in §574 (2) (b) can be read either way. Therefore, the intent of Congress is the only issue in this case because Con-

gress has pre-empted the field of taxation of the personal property of servicemen and the constitutionality of this pre-emption was established in *Dameron v. Brodhead*, supra. Even if Mississippi had classified or identified its tax as an excise tax for the privilege of using the highways, this would make no difference. Congress has declared an immunity and *Dameron v. Brodhead* held that Congress was acting constitutionally. Therefore, the only issue is the intent of Congress and not the intent of Mississippi. Thus if Congress intended to exempt motor vehicles from ad valorem property taxes, it makes no difference what label is put upon the tax by Mississippi or how the amount of the tax is computed. The effect and nature of the tax is controlling, and the Congressional intent cannot be evaded by labels or other tax patterns designed to evade the fact that an ad valorem property tax is actually what is involved. If Congress intended to exempt motor vehicles from ad valorem taxes, no strategem (such as a pre-payment of ad valorem taxes as a prerequisite for obtaining registration) can be allowed to avoid the exemption. Congressional intent is the only question involved in this case.

4. It is submitted that Congress did not intend that the proviso should be applied so as to destroy the immunity otherwise granted to servicemen from ad valorem property taxes on motor vehicles.

(a) The history of §574 shows that Congress has always leaned toward liberality in favor of the servicemen. The amendments of 1942, 1944 and 1962, discussed supra, reveal this tendency.

(b) H.R. 4733 which became the 1944 amendment to

Section 514 (574) of the Soldiers' and Sailors' Civil Relief Act, was largely the recommended draft prepared by the Office of The Judge Advocate General, Army Service Forces, and submitted to the Chairman, Committee on Military Affairs, House of Representatives, 78th Congress, by a letter of transmittal from the Secretary of War on June 13, 1944. (See Appendix H, pp. 58-74) Of particular interest to an understanding of the true intent of Congress and what was meant by the terms "license, fee, or excise" as it appears in the statute is the letter from the Secretary of War to the Chairman of the Committee on Military Affairs, where the following appears:

> "It will be noted that 'personal property' is defined therein to include motor vehicles and that the term 'taxation' is defined to include *licenses* imposed in respect of motor vehicles or the use thereof provided that the *license* 'required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid'." (Appendix H, p. 71) (Italics added)

Of further significance, when considering this interpretation, is a letter from the official Army files, identified as a Memorandum For Director, Military Personnel Division, A.S.F., dated 18 May 1944, prepared for The Judge Advocate General found in Appendix H, pp. 66-67 where the following appears:

> "7. Attention is directed to the fact that 'personal property' is defined to include motor vehicles and that the term 'taxation' is defined to include *licenses* imposed in respect of motor

vehicles or the use thereof provided that the *license* 'required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid.' Note that this proviso omits any reference to payment to a 'political subdivision of any of the foregoing'; this was done advisedly as it was believed that a person in the military service should only be required to pay the *state* license in his state or residence as a prerequisite to being freed from the burden of paying automobile license taxes where he is stationed."

The historical material added in Appendix H, explains to some degree the void on this point in the Congressional Hearings on this amendment to Section 514 (574) of the Soldiers' and Sailors' Civil Relief Act of 1940.

(c) This court in *Dameron v. Brodhead* also recognized a Congressional intent toward liberality and refused to accept a narrow interpretation based on the premise that §574 was applicable only when double taxation would actually result unless immunity was granted. In *Le Maistre v. Leffers,* 333 U.S. 1 at p. 6, this court said that the provisions of the Soldiers' & Sailors' Civil Relief Act must be read "with an eye friendly to those who dropped their affairs to answer their country's call". In *U.S. v. Arlington County, Va.,* 326 F(2d) 929 (1964) the Circuit Court for the Fourth U. S. Circuit Court of Appeals held (without the benefit of the 1962 Amendment) that Arlington County, Virginia, could not impose an ad valorem property tax upon personal property owned by a serviceman, when the service-

man, a domiciliary of New Jersey, was serving under military orders at a place outside of Virginia and New Jersey, although his property was physically situated in Arlington County.

5. If Congress had intended that the prepayment of "licenses, fees and exercises" in the home state was a condition precedent for claiming immunity from ad valorem property taxes in the host state the proviso would have read:

> "Provided that the license, fee, excise *and* ad valorem taxes required by the state * * * wherein the person * * * is legally domiciled, has been paid."

6. It is submitted that the purpose of the proviso was to require constant identification with an individual person of property so highly mobile as motor vehicles. Other personal property such as furniture, electrical appliances, etc., are not usually registered or licensed because there is no necessity for the police control device supplied by registration and licensing; but there is such a necessity as to motor vehicles whose outstanding characteristic of mobility on highways requires prompt and easy identification with particular owners. Furniture, appliances, etc. are rarely involved in accidents on public highways; motor vehicles frequently are. It is submitted that Congress intended by the proviso (which is applicable only to motor vehicles) *simply* and *only* to require registration and licensing for identification purposes *either* in the *home* state or the *host* state.

7. Mississippi's contention is that there was a *further*

penalty for non-registration in the home state: viz., a loss of immunity from ad valorem property taxes which otherwise need not be paid in addition to the requirement that host state registration and licensing be accomplished. This is contrary to Mississippi's own tax pattern as to motor vehicles, for as has been pointed out above (sub-para. 1 of E), Mississippi law provides that if its road and bridge privilege tax is paid, ad valorem property taxes on exempt motor vehicles cannot be assessed or collected. In this situation motor vehicle *home state* registration and licensing have not been accomplished and thus Mississippi's interpretation of the proviso in §574(2b) in *this* case as to a trailer is contrary to its position as to motor vehicles. However, because the Mississippi House Trailer Ad Valorem Tax Act does not have a provision similar to the one in its Motor Vehicle Ad Valorem Tax Act, Mississippi contends that an *Act of Congress*, to wit: §574(2b) should be read differently in one case, i.e., motor vehicles, than it is in another, i.e., house trailers. It is submitted that Mississippi cannot manipulate for its own purpose the meaning and intent of an Act of Congress.

8. Finally, if there is any doubt about the Congressional intent, it should be resolved in favor of servicemen for whom Congress has over the years, in several amendments, clearly indicated that it intended to grant liberal immunity. There is no reason to believe that Congress intended to place the heavy burden of loss of immunity from ad valorem property taxes solely to achieve the purpose of police control identification which is easily obtainable only through registration and licensing. The proviso can, and should, be read simply to the effect that it withholds immunity from host state licensing and registration unless and until there is

home state licensing and registration. It is submitted that this is all that Congress intended.

POINT II.

ALTERNATIVELY, IF THE COURT SHOULD CONCLUDE THAT §574(1) DOES NOT DISPOSE OF THE CASE, AND THAT THEREFORE CONSIDERATION SHOULD BE GIVEN TO §574(2), PETITIONER SUBMITS THAT §574(2) IS INAPPLICABLE, BECAUSE A HOUSE TRAILER IS NOT A MOTOR VEHICLE.

A condition to the application of the proviso in Section 574(2) is that the license, fee, or excise in question is imposed on "motor vehicles". The petitioner's house trailer, while it does have wheels, is supported by concrete blocks and is not self-propelled. (R. 14, 24, 47.) The Attorney General in his opinion concluded without discussion that "The application [for refund] shows further that the property upon which the tax was paid is, in fact, a motor vehicle," citing the provisions of the 1962 house trailer tax act and the 1958 motor vehicle tax act. (R. 30, 31 and Appendix D, *infra*. There is no basis in either of these statutes for this conclusion.

Petitioner submits that house trailers are not *motor vehicles* within the common usage of that term. Since Section 574 does not specifically define *motor vehicles*, it is reasonable to assume that Congress did not intend to include within the definition of *motor vehicles* in the proviso, house trailers which, as in the instant case, are merely capable of being moved vis-a-vis those which are actually moved and using the public roads and highways. We contend that the definition of a *motor vehicle*, as used in the proviso of Section 574, is a

question not to be determined by State law, but by Federal law.

The text writer's definition of a motor vehicle, *i. e.*, a vehicle operated within itself and used for the purpose of carrying passengers or materials, generally includes all vehicles propelled by any power other than muscular power, except traction engines and such motor vehicles as run only upon rails or tracks. See Blashfield, Cyclopedia of Automobile Law and Practice, Perm. Ed., Ch. 1, §2. The definition has been implemented by a number of State courts to suit varying factual situations, none of which address themselves to the true posture of the facts in the instant case, except the Supreme Court of Mississippi in the decision below. Their conclusion that the definition of *house trailers* is conclusive and binding upon federal courts (R. 52) appears to merit further examination. The statutory basis for their decision, Section 10007-03(a) Motor Vehicle Ad Valorem Tax Act of 1958, c. 588, 7A Mississippi Code (1942), Recompiled (1952 Cum. Supp.), is quoted as follows:

> "The term 'motor vehicle' shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than muscular power, over the highways, streets, or alleys of this state."

This definition appears to be unusually broad and is questioned by petitioner on the ground that it contravenes the more usual interpretations relied upon by courts over the years.

Courts are not unanimous in defining the term "motor vehicle". Definitions are as varied as the factual

situations requiring interpretation. For example, there are decisions which take the view that the term "motor vehicle" is synonymous with "automobile",[1] or "motor car",[2] and that it is self-propelled[3]. Others, that a "trailer" is not a "motor vehicle",[4] or the fact that it is drawn does not make a "trailer" a "motor vehicle".[5] One decision equates a "trailer" with a "motor vehicle" provided it is attached to and operated with an automobile which provides power[6]. In any event, the

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[1]The terms "motor vehicle" and "automobile", as used in various statutes relating to licensing and operation of automobiles and motor vehicles, are practically synonymous. Thompson v. Georgia Power Co., 37 S. E. 2d 622, 630, 73 Ga.App. 587.

[2]"Motor vehicle" is synonymous with "automobile" and "motor car" as used in Act Oct. 3, 1917, § 600(a), 40 Stat. 316, and Revenue Act 1918, § 900, 40 Stat. 1122, providing for their taxation and includes any self-propelled vehicle irrespective of the nature of its use, primarily used for transportation of persons or property other than the machine itself; automobile vehicle or mechanism; a specially self-propelled vehicle suitable for use on the street or roadway. American-La France Fire Engine Co. v. Riordan, D.C.N.Y., 294 F. 567, 571.

[3]The term "motor vehicle" ordinarily means a vehicle that is self-propelled as defined by statute. Prudential Ins. Co. of Great Britain v. Associated Emp. Lloyds, Tex.Civ. App., 250 S.W.2d 477, 479, 480.

[4]A trailer is not a "motor vehicle" within statute separately defining motor vehicles and trailers. State v. Harper, 184 S.W.2d 601, 605, 353 Mo. 821.

[5]The mere fact that trailer is hitched to and drawn by motor vehicle does not change its character as separate and distinct vehicle or make it a "motor vehicle". Hennessy v. Walker, 17 N.E.2d 782, 784, 785, 279 N.Y. 94, 119 A.L.R. 1029.

[6]Two-wheeled utility trailer designed for and employed in general highway transportation and attached to and operated as unit with automobile which provides operative power is "motor vehicle". Vest v. Kramer, 107 N.E.2d 105, 108, 158 Ohio St. 78.

Trailers and semitrailers are not "motor vehicles." Hennessy v. Walker, 17 N.E.2d 782, 784, 785, 279 N.Y. 94, 119 A.L.R. 1029.

Trailers and semitrailers transferred as an isolated or occasional sale by a nonretailer are not taxable under the Sales Tax

general connotation of a motor vehicle includes self-propulsion[7], or movement as a unit of locomotion and is suitable for use on a street or road[8], and does not run on a track or stationary rail[9]. One court chose to rely on a classic dictionary definition of automobile[10].

The lack of a special definition of the words "motor vehicles" in Section 574(2) thus implies that Congress employed them in their usual and customary sense. Moreover, the absence of qualifying words or special definition is particularly important in this situation because the statute, as a whole, is carefully drafted, utilizing precise language and special definitions. The Supreme Court of the United States in *Addison v. Holly Hill Co.*, 322 U. S. 607, when faced with a similar prob-

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Act, and are not included within the phrase "motor vehicle" as used in a Sales Tax Act, since a "motor vehicle" naturally connotes and suggests some sort of self-propulsion. Pacific Intermountain, Exp. Co. v. State Tax Commission of Utah, 329 P.2d 650, 652, 8 Utah 2d 144.

[7]A "motor vehicle" means any form of self propelled vehicle suitable for use on street or roadway. American Mut. Liability Ins. Co. v. Chaput, 60 A.2d 118, 120, 121, 95 N.H. 200.

[8]A "motor vehicle" in popular sense is a vehicle suitable for use on a street or roadway. Golding-Keene Co. v. Fidelity-Phenix Fire Ins. Co., 69 A.2d 856, 858, 96 N.H. 64.

[9]"Motor vehicle" is generic term for all classes of self-propelled vehicles not operating on stationary rails or tracks, and is broader than automobiles. *Jernigan v. Hanover Fire Ins. Co. of N.Y.*, 69 S.E.2d 847, 848, 235 N.C. 334.

[10]Webster's New Int. Dict. The term "automobile" has its derivation in the Greek "autos", meaning "self," and the Latin "mobilis," meaning "movable. "Automobile", therefore, means "self-moving". It may be defined as a wheeled vehicle propelled by steam, electricity, or gasoline, and used on highways and streets for the transportation of persons or merchandise. *Christy v. Elliott*, 216 Ill. 31, 74 NE 1035; *Hoover v. National Casualty Co.* 236 Mo. App. 1093, 162 SW2d 363.

lem of determining the meaning of common words used in a statute, noted that (pp. 617-618)—

> "the ultimate question is what has Congress commanded, when it was given no clue to its intentions except familiar English words and no hint by the draftsmen of the words that they meant to use them in any but an ordinary sense. * * * After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

Moreover, the provisions of the Soldiers' and Sailors' Civil Relief Act must be read, as the Supreme Court of the United States said in *Le Maistre v. Leffers*, 333 U. S. 1, 6, "with an eye friendly to those who dropped their affairs to answer their country's call."

Petitioner submits that the Supreme Court of Mississippi erred when it concluded that the definition of motor vehicles in other Federal statutes included house trailers. It is clear from each statute cited that "movement" is an essential element in each definition of the words "motor vehicle"; and that mere capability of being moved does not bring the object within the meaning of the definition. Thus:

A. In 40 U.S.C. 472(1) (this is the federal statute pertaining to Management and Disposal of Government property) the term "motor vehicle" is defined to include any vehicle self-propelled or drawn, but the definition goes on to state that the vehicle must be "designed and operated principally for highway transportation."

B. In 49 U.S.C. 303, Interstate Commerce Act, Part II,; Motor Carriers, (this is the statute dealing with motor carriers in interstate commerce), the term "motor vehicle" is defined to include a trailer, but the definition goes on to make clear that it must be "propelled or drawn by a mechanical power and used upon the highways".

C. In 18 U.S.C. 31 (this statute deals with destruction of Aircraft and Motor Vehicles), in defining the term "motor vehicle", it is specifically provided that the object must be "propelled or drawn by mechanical power . . . on the highways in the transportation of passengers and property".

Petitioner submits that a better example to illustrate that movement on highways is intended by Congress whenever it used the term "motor vehicle" is 18 U.S.C. 2311 (Interstate transportation of stolen property), which defines the term "motor vehicle" among other things as "any other self-propelled vehicle designed for running on land."

In this statute, commonly identified as the Dyer Act, Congress defined "motor vehicle" recognizing that it was a highly mobile and potentially dangerous instrument or vehicle of social and economic force which required strict means of police control; identification with a specific owner at all times; an immediate and convenient reference record; and some form of registration recognition. These characteristics require police power control measures which are necessary and proper to maintain a legitimate and orderly surveillance over vehicular mechanisms capable of travelling great distances under their own power us-

ing public roads and highways. Petitioner submits that these objectives are analagous to those of the State of Mississippi and this definition of a "motor vehicle" more nearly coincides with what Congress intended when they referred to the term "motor vehicles" in the proviso in Section 574 (2) (b). In this connection, compare sub-paragraph 6, Paragraph E of Point I, *supra*.

It is submitted, therefore, that the Supreme Court of Mississippi erred when it concluded that those federal statutes which are in pari materia impel the conclusion that the term "motor vehicle" whenever used by Congress includes a house trailer which has not, as in this case, been moved over the highways at all during the taxable period.

POINT III.

ALTERNATIVELY, IF A HOUSE TRAILER IS A MOTOR VEHICLE WITHIN THE MEANING OF §574(2) THEN THE PROVISO OF THIS SECOND PARAGRAPH DOES NOT APPLY BECAUSE THE STATE OF SOUTH CAROLINA, WHICH IS PETITIONER'S DOMICILE, REQUIRES NO PAYMENT OF TAX OF ANY SORT UNLESS THE VEHICLE OPERATES OR MOVES ON THE HIGHWAYS OF SOUTH CAROLINA.

A further condition to the application of the proviso in Section 574(2)(b) is that the serviceman has failed to pay licenses, fees, or excises imposed on his motor vehicle by the state of his residence or domicile. The fact that the petitioner is a resident and domiciliary of the State of South Carolina (R. 13,15) has been accepted without question by the Attorney General (R. 30). It is also clear that the petitioner has never regis-

tered his house trailer, or paid any taxes on it to the State of South Carolina or to any other state. (R. 13, 26.) However, the Attorney General found that South Carolina required each house trailer to be registered and licensed, and a registration fee paid on it, that the petitioner had failed to pay, and that under Section 574(2) he was therefore not covered by the exemption and was liable for the tax paid. (R. 30, 31). The Chancellor agreed with this conclusion, (R. 40) relying on the opinion of the Attorney General and the authorities referred to there, and, in addition, on Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) (Appendix C, *infra*).

The Supreme Court of Mississippi erroneously concluded that the proviso of §574(2)(b) required that petitioner *register* his house trailer with South Carolina authorities before he could claim immunity from the Mississippi ad vallorem tax. However, §574(2)(b) does not deal with registration at all, but with *payment* of "licenses, fees or excises" — *when required.* But under the facts of this case South Carolina did not require the payment of any fees, licenses or excises.

Under South Carolina law, "Every * * * trailer * * * operated or moved upon a highway in this State shall be registered and licensed * * *" 10 Code of Laws of South Carolina (1962), Sec. 46-11 (Appendix C, *infra).* The annual license fee for such a house trailer is $6. Section 46-35.3, 10 Code of Laws of South Carolina (1962) (Appendix C, *infra).* Section 46-100, 10 Code of Laws of South Carolina 1962 (1962 Supp.) states that "Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling

purposes," the owner shall obtain a license from the county. The annual license fee under this provision is $2. Section 46-100.2, 10 Code of Laws of South Carolina (1962) (1962 Cum. Supp.) Appendix C, *infra*). However, a house trailer which is licensed by the South Carolina State Highway Department under Section 46-11 is exempted from the registration requirement of Section 46-100. Section 46-100.4, 10 Code of Laws of South Carolina (1962) (1962 Cum. Supp.) (Appendix C, *infra*).

By means of the statutory provisions outlined above the State of South Carolina has dealt with two groups of house trailers—(1) those "operated or moved upon a highway" in South Carolina, and (2) those brought into South Carolina or purchased in that state which are not used on the highways. However, the house trailer of the appellant was purchased in the State of Mississippi (R. 13, 25, 47) and has never been out of this state. (R. 53.) Since it has never been taken into the State of South Carolina and has never been moved or drawn over the highways of that state, it is not covered by the license, fee, or excise requirements established by the State of South Carolina. The petitioner, therefore, has not failed to pay any licenses, fees, or excise imposed on his house trailer by South Carolina because that state has not established any such requirements for house trailers such as the petitioner's.

The fact that the State of South Carolina has not imposed licenses, fees, or excises on house trailers such as the petitioner's is not an authorization to the State of Mississippi to do so. In *Dameron v. Brodhead*, 345 U. S. 322, the Supreme Court of the United States considered that very question and rejected the contention that a taxing jurisdiction could step into the

void resulting from the non-action by the state of residence or domicile. The Court held that Section 574 forbade the collection of a personal property tax when the state of the taxpayer's residence and domicile had levied none, noting that the statute plainly provided that (p. 326)—

> " 'personal property shall not be deemed to be located or present in or to have a situs for taxation' in the state of temporary presence in any case. There is no suggestion that the state of original residence must have imposed a property tax. Since the language of the section does not establish a condition to its application, we would not be justified in doing so."

It must be concluded that since South Carolina has imposed no license, fee, or excise on the petitioner's house trailer, he did not, within the meaning of the proviso in Section 574(2)(b), fail to pay "the license, fee, or excise required by the State * * * of which the person is a resident" or a domiciliary. Section 574(1), therefore, is applicable to bar the taxes in question.

POINT IV.

THE DECISION OF THE SUPREME COURT OF MISSISSIPPI MISCONSTRUES, MISINTERPRETS OR IGNORES THE BASIC REASONING OF DAMERON V. BRODHEAD.

The decision of this Court in the case of *Dameron v. Brodhead*, supra, established the following:

a) Congress has the authority to constitutionally exempt servicemen from burdens of taxation by states in which they may be required to be present by virtue of their military service.

b) Immunity from taxation of personal property by the host state exists even though the home state imposes no tax; therefore the immunity is not contingent on the possibility of double taxation.

c) There should be liberality in interpreting the statute.

The Supreme Court of Mississippi, in the decision below, concedes that Congress has the authority to legislate in this field and that the Act bars the imposition by any state of ad valorem personal property taxes on personal property owned by a non-resident serviceman. (R. 50). However, Mississippi construes Section 574(2)(b) so as to add an exception to this general prohibition. It is at this point that Mississippi has misconstrued, misinterpreted, or ignored the reasoning of this Court in the *Dameron* case. It has construed Section 574 narrowly rather than liberally, and it has resorted to the double taxation possibility as a requirement for the existence of immunity. It is submitted that this approach is contra to *Dameron v. Brodhead.*

CONCLUSION

In the light of the foregoing, it is respectfully submitted that Judgment of the Mississippi Supreme Court should be reversed.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that service of the foregoing brief has this ____ day of August, 1965, been made on counsel for the Respondents by depositing a copy thereof, postage prepaid, in the United States mails, properly addressed to him as follows:

Honorable Joe T. Patterson
Attorney General of the State of Mississippi
Jackson 5, Mississippi

Leon D. Hubert, Jr.,
Counsel for Petitioner

APPENDIX A

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888, 54 Stat. 1178:

SEC. 514 [as added by Sec. 17, Soldiers' and Sailors' Civil Relief Act Amendments of 1942, C. 581, 56 Stat. 769; and as amended by Sec. 1, Act of July 3, 1944, c. 397, 58 Stat. 722; and Act of October 9, 1962, P. L. 87-771, 76 Stat. 768].

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall

not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. *Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders:** *Provided,* that nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect to personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided,* That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid.

*Italics show 1962 Amendment.

(50 U.S.C. Appendix 1958 ed., Sec. 574.)

APPENDIX B

1. *7A Mississippi Code 1942, Recompiled:*

§ 9883. *Ad valorem tax — municipal general levy. —*

Municipalities may levy taxes in an amount not exceeding fifteen (15) mills on the dollar of the assessed valuation of all taxable property within such municipality for general revenue purposes and for general improvements. Provided, however, the governing authorities of any municipality may make additional levies for special purposes as authorized by law, provided the aggregate of all such special levies does not exceed the limitation prescribed therefor by law.

* * * *

2. *7A Mississippi Code 1942, Recompiled (1962 Cum. Supp.):*

§ 9877. *State ad valorem tax levy.*

A state ad valorem tax of four (4) mills on the dollar for the year 1958 and for each year thereafter is hereby levied on all taxable property in the State of Mississippi.

* * * *

§ 9879. *Ad valorem taxes — general county levy.*

(1) The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one year,

as shown by the assessment roll containing assessments of property made as of January first of the year, and the assessment of motor vehicles as made according to the provisions of the "Motor Vehicle Ad Valorem Tax Act of 1958" [§§ 10007-01 et seq.], for all general county purposes, exclusive only of levies for roads and bridges and schools, at the rate herein specified, but not in excess of the following amounts or rates:

* * * *

3. *Motor Vehicle Ad Valorem Tax Act of 1958, c. 588, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-02. *Purpose of Act.*

The purpose of this act is, with reference to assessing ad valorem taxes on motor vehicles which are operated upon the public highways of this state, to, (a) fix the taxable year, (b) fix the tax lien date, (c) determine the method of assessing, (d) fix the date for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the date of collecting such taxes.

§ 10007-03. *Definitions.*

The subject words and terms of this section for the purpose of this Act, shall have meanings as follows:

(a) The term "motor vehicle" shall mean any device and attachments supported by one or more wheels which is propelled or drawn by any power, other than

muscular power, over the highways, streets, or alleys of this state.

* * * *

§10007-04. *Who is liable for tax — time of payment — due date.*

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license * * * * tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license.

* * * *

§10007-05. *Taxable and fiscal years — taxes to be collected by county and municipal tax collectors — when to be paid.*

For the purpose of this act the taxable year and fiscal year shall commence each year on November first and shall end on October thirty-first of the following year, and such taxable year shall run concurrently with the taxable year now in effect in the law pertaining to the payment of the road and bridge privilege license tax on motor vehicles. Ad valorem taxes on motor vehicles shall be collected by the county tax collector for the county and state and by the municipal tax collector for the municipalities and municipal separate school districts. Ad valorem taxes for any ensuing year may

be paid during the month of October, however, and said ad valorem taxes on any motor vehicle must be paid at the same time or prior to the time that the road and bridge privilege license is issued for the subject motor vehicle, unless herein otherwise specifically exempt from such ad valorem taxes.

In cases where the privilege tax is not due on a motor vehicle prior to November thirtieth then the ad valorem taxes due on such motor vehicle shall be calculated for only the proportional part of the taxable year remaining, prorated from the first day of the month on which said taxes are due.

§ 10007-08. *How Assessed Value is Determined.*

Motor vehicles shall be assessed uniformly according to value and such assessed value shall be determined by an assessment schedule which shall be prepared and made of minute record by the state tax commission and shall be certified to the president of the board of supervisors of the various counties of the state, and to the mayor or the presiding officer of the municipal boards of the various municipalities, and municipal separate school districts of the state, in care of the clerk of said respective boards, as the official motor vehicle assessment schedule which shall be used by the proper officials of both respective jurisdictions in assessing motor vehicle ad valorem taxes for the ensuing fiscal year.

§ 10007-21. *Exemptions and credits — penalty for violation of section.*

* * * *

Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act.

* * * *

4. *House Trailer Ad Valorem Tax Act, Laws 1962, c. 535, 7A Mississippi Code (1942), Recompiled (1962 Cum. Supp.):*

§ 10007-51. *Purpose of Act.*

The purpose of this act is, with reference to assessing and collecting ad valorem taxes on house trailers, to (a) fix the taxable year, (b) fix the lien date, (c) determine the method of assessing, (d) fix the dates for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) to fix the dates for collecting such taxes.

§ 10007-52. *Definitions.*

The subject words and terms of this section, for the purposes of this act, shall have meanings as follows:

(a) The term "house trailer" shall mean and include any trailer-type vehicle or mobile home, designed and constructed so as to be suitable for use for domestic, commercial, or industrial purposes, and which is constructed so that it may be moved from place to place over the highways and streets by being supported by two (2) or more wheels, and drawn or

moved by motive power not its own, and which house trailer is not taxed under authority of chapter 588, laws of 1958 [§§ 10007-01 et seq.].

(b) The term "person" shalll mean any natural person, agency, firm, copartnership, corporation, joint stock, or other association or organization.

§ 10007-53. *Registration fee — report and payment — proration of tax.*

Any person owning, occupying, using, or having in his possession or control a house trailer shall, not later than the last day of November each year, register such house trailer with the sheriff of the county in which it is located on such date. At the time such registration is made, and before a registration certificate and label may be issued, the said owner, occupant, user, possessor, or controller of said house trailer shall pay a registration fee of two dollars and fifty cents ($2.50) together with all ad valorem taxes due on said house trailer for the then fiscal year. Fifty cents (50c) of this fee shall be retained by the sheriff, one dollar ($1.00) shall be paid into the general county fund, and one dollar ($1.00) of this fee shall be forwarded to the tax commission to cover cost of labels, tax receipt forms, etc., as hereinafter provided.

* * * *

§ 10007-54. *Taxable and fiscal year — tax lien date — trailer brought into state.*

For the purpose of this act the taxable and fiscal year shall commence each year on November first and

shall end on October thirty-first of the following calendar year. The tax lien date shall also be November first for a house trailer owned on that date.

The date of purchase of a house trailer during the fiscal year shall constitute the tax lien date for such vehicle and the ad valorem taxes will be calculated on a pro rata basis.

A person bringing such a house trailer into this state, on which the taxes have already been paid in another state, shall be allowed thirty (30) days in which to pay the tax in this state.

§ 10007-57. *Assessed value of house trailer — collection and assessment of municipal taxes — exceptions to assessment schedule.*

The assessed value of house trailers as set out in the assessment schedule provided for by chapter 588, laws of 1958 [§§ 10007-01 et seq.], as amended, shall be used by the sheriff in assessing and collecting ad valorem taxes on said house trailers....

§§ 10007-58. *Exemptions.*

(a) House trailers which are already taxed under authority of chapter 588, Laws of 1958 [§§ 10007-01 et seq.], are exempt from the taxes authorized by this act.

* * * *

(c) If any vehicle defined in this act is used or is to be used upon the streets and highways of this State

after the tax, as set out in this act, has been paid, then the sheriff shall exempt such vehicle from further ad valorem taxes for the remaining portion of the current fiscal year in issuing a road and bridge privilege license for such vehicle.

* * * *

§ 10007-10. Assessment Schedule to be prepared by state tax commission—basis of schedule—corrections.

The state tax commission shall, on or before the fifteenth day of June of each year, prepare and adopt, by minute record, an assessment schedule of motor vehicles, as defined in this act, which such assessment schedule, and no other, excepting as may be hereinafter provided, shall be used by the tax collector of each county and each municipality and municipal separate school district in the state, in assessing, calculating and collecting ad valorem taxes in each respective jurisdiction on all motor vehicles liable for such tax as authorized by this act.

In preparing the said assessment schedule the tax commission may make use of, as a base, the value of the various makes, models, year of manufacture, and types of motor vehicles as adopted by some reputable nation-wide agency or association which regularly compiles and furnishes such information as to actual value of the different motor vehicles as to make, model, type, and year of manufacture, or by any other method or methods or combination of methods which in its judgment will tend to equalize the assessed value of property of this classs with property of other classes in general. These various motor vehicles, together with any

special equipment, may be grouped into as many categories as, in the judgment of the tax commission, will be most practical in effecting equalization. Vehicles of a manufactured year model next succeeding the adoption of such schedule shall be assessed at a value which is twenty per cent (20%) higher than that at which the latest and most similar model is assessed for as set out in the schedule.

In preparing the said assessment schedule the tax commission shall apply such a percentage to the base value of such motor vehicles which, in its best judgment, will produce an assessed value which will equalize the assessed value of motor vehicles with the assessed value of other property in general, throughout the state, so far as is practical.

The tax commission shall also make necessary corrections and amendments to this schedule from time to time throughout the fiscal year, and in so doing the general procedure set out above shall be followed.

SOURCES: Laws, 1958, ch. 588, § 10; 1960, ch. 473, §1.

CROSS REFERENCES: House Trailer Ad Valorem Taxes § 10007-57; Sheriffs § 4266; State Tax Commission § 9198.

APPENDIX C

1. 10 Code of Laws of South Carolina 1962:

§ 46.2. *Definitions of words and phrases.* — The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, to wit:

(1) *"Vehicle:"* Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks;

(2) *"Motor Vehicle:"* Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails;

* * * *

(13) *"Trailer:"* Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle;

§ 46-11. *Vehicles required to be registered and licensed.* — Every motor vehicle, trailer, semitrailer, pole trailer and special mobile equipment vehicle driven, operated or moved upon a highway in this State shall be registered and licensed in accordance

with the provisions of this chapter. It shall be a misdemeanor for any person to drive, operate or move upon a highway or for the owner knowingly to permit to be driven, operated or moved upon a highway any such vehicle which is not registered and licensed and the required fee paid as provided for in this chapter. (1952 Code § 46-11; 1949 (46) 342.)

§ 46-35.3. *Fees for house trailers.* — For every house trailer, the annual fee shall be six dollars. The Department shall classify as a *"house trailer"* every trailer or semitrailer which is designed, constructed and equipped as a dwelling, living abode, or sleeping place, either permanently or temporarily, and is equipped for use as a conveyance on streets or highways, or a trailer or semitrailer of similar nature whose chassis and exterior shell is designed and constructed for use either permanently or temporarily for advertising, sales, display or promotion of merchandise or services or for any other commercial purpose, except the transportation of property for hire or the transportation of property for distribution by a private carrier. The Department may not license and register a house trailer which exceeds the permissible size limitations prescribed in §§ 46-654, 46-657 and 46-657.1, but such house trailers which may be permitted to be moved over the highways by the Department under special permits issued pursuant to §§ 46-667 to 46-667.3 shall pay to the Department a fee of five dollars per trip. (1952 Code § 46-35; 1949 (46) 342; 1959 (51) 391.)

2. 10 Code of Laws of South Carolina 1962 (1962 Supp.):

§ 46-100. *Mobile homes and house trailers to be*

licensed. — Within fifteen days after bringing a mobile home or house trailer into this State, or the purchase of a mobile home or house trailer in this State, for dwelling purposes, the owner shall obtain a license from the governing body of the county or its designated agent. (1962 (52) 2181.)

§ 46-100.1. *Not to be licensed unless taxes paid.* — No mobile home or house trailer, except those owned or stocked by dealers for resale, may be registered and licensed unless a signed statement accompanies the application certifying that all county and municipal taxes legally due by the applicant during the preceding year have been paid, if such mobile home or house trailer were subject to any such tax. A transfer between members of the same family shall not, for the purpose of this article, be considered a bona fide purchase. (1962 (52) 2181.)

* * * *

§ 46-100.2. *Period of license; form; fee.* — The license required under the provisions of this article shall be good for a period of one year beginning on the first day of each year. Licenses issued between July first and December thirty-first shall be issued for one half the annual rate. The license shall be of such form as shall be prescribed by the Tax Commission and shall be displayed on the mobile home or house trailer so as to be clearly and readily visible from the outside. The annual license fee shall be two dollars. (1962 (52) 2181.)

§ 46-100.4. *Article not applicable if trailer licensed by Department.* — The provisions of this article shall not be applicable if the mobile home or house trailer is licensed by the Department. (1962 (52) 2181.)

APPENDIX D

The opinion of the Attorney General of the State of Mississippi in this case is as follows (R. 36-38):

[Formal parts omitted]
April 4, 1963

Mr. W. D. Neal
State Auditor of Public Accounts
New Capitol Building
Jackson, Mississippi

Re: Application for tax refund of Sgt. Jesse E. Snapp, Box 539, Crystal Springs, Mississippi

Dear Mr. Neal:

The above-styled application for tax refund is based upon an alleged exemption granted by *50 USC App.* 574. The provisions of that federal statute deemed pertinent to this application provide as follows:

[Section 514 of the Soldiers' & Sailors' Civil Relief Act of 1940, as amended, is omitted.]

It will be noted that the federal statute in question does not grant an exception from taxation, but it creates a legal fiction that personal property of a serviceman shall not be deemed to have lost its situs in his home state and acquired a situs where it is, in fact, physically located. As regards all other items of per-

sonal property, except motor vehicles, the legal fiction thus created is a bar to taxation by a state other than the state of the domicile of the serviceman. *Dameron vs. Brodhead,* 345 U. S. 322, 97 L. ed. 1041.

However, the statute itself provides that in order for the legal fiction to be effective, insofar as motor vehicles are concerned, the serviceman must have paid taxes in the state in which he is a resident or domiciled.

This application shows conclusively that no taxes have been paid on this house trailer in any state other than the taxes for which this application for refund is made. The application shows further that the property upon which the tax was paid is, in fact, a motor vehicle. *Chapter 535 (H.B. #747), Laws of 1962* and *Chapter 588, Laws of 1958.*

The State of South Carolina wherein the applicant is domiciled requires that each trailer, including "house trailers," shall be registered, licensed and a registration fee paid thereon. *Sections 46-2 (13), 46-11* and *46-35.3, Code of Laws of South Carolina 1962.*

The application shows further that the applicant has failed and refused to register his house trailer under the provisions of *Chapter 588, Laws of 1958,* which said statute grants to him an exemption from the payment of ad valorem taxes because of the legal fiction created by 50 *USC App.* 574. Biennial Report of the Attorney General of the State of Mississippi 1957-59, pages 99, a copy of which is attached hereto.

From the foregoing, it is the opinion of this office that

the taxpayer was and is liable for the tax paid. Which said payment was made by his own election not to register his motor vehicle in the state of his domicile thereby failing to bring himself within the provisions of the federal statute, or by avoiding the tax by registering his motor vehicle under a statute of this state under which the payment of the taxes is not required. *Whiting vs. City of Portsmouth*, 202 Va. 609, 118 SE 2d 505, supports this view.

It follows that this application for refund should be and the same is hereby disapproved.

Sincerely yours,

JOE T. PATTERSON, ATTORNEY GENERAL
By Martin R. McLendon
Assistant Attorney General

APPENDIX E

Opinion of the Attorney General of the State of Mississippi, dated July 11, 1958, Biennial Report of the Attorney General of Mississippi, 1957-1959, pp. 99-100, is as follows:

This is in reply to yours of July 2, 1958, wherein you ask whether or not personal automobiles of members of the armed forces stationed in your city are exempt from state, county, and municipal ad valorem taxes whether the tag is bought in this state or another state.

Section 574, Title 50, USCA, provides that when a member of the armed forces is in any state in compliance with military or naval orders his ". . . personal property shall not be deemed to be located or present in or to have status for taxes in such state. . ." Section 21 of House Bill No. 3, of the Regular Session of 1958 [Section 10007-21 (Appendix B4, *supra*)], provides "Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in that state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this act."

It is, therefore, the opinion of this office that members of the armed forces of the United States who are nonresidents of the State of Mississippi and who are residing in your community in compliance with military or naval orders are exempt from the payment of ad valorem taxes imposed by House Bill No. 3, supra, whether they pay the road and bridge privilege license tax and purchase their license plates in Mississippi or not, provided the automobile in question is not used in any way for a trade or business.

APPENDIX F

1. S. Rep. No. 959, 78th Cong., 2d Sess., pp 1-5:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that provision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation,

but it has been held that section 514 of the act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselves at times subjected to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers [illegible] the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

Letter of the War Department follows:

War Department,
Washington, June 9, 1944.

Hon. Robert R. Reynolds,
Chairman, Committee on Military Affairs, United States Senate.

DEAR SENATOR REYNOLDS: The War Department has no objection to the enact-

ment of H. R. 4733, Seventy-eighth Congress, an act to amend section 514 of the Soldiers' and Sailors' Relief Act.

The purpose of the proposed legislation is to prevent the multiple taxation of the personal property of military personnel by the various States, which it is understood was one of the purposes of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by the act of October 6, 1942 (56 Stat. 769, 777).

As presently worded, section 514 of the act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the State of "temporary residence" from taxing tangible personal property actually located in such State, so long as the tax does not depend on residence or domicile. A few States, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

The proposed legislation will not result in any additional cost to the Government.

The Bureau of the Budget advised with respect to a similar report on H. R. 4733 to the Committee on Military Affairs, House of Representatives, that there was

no objection to its submission to the Congress.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

The report of the House Military Affairs Committee (Rept. No. 1514) is appended hereto and made a part of this report.

2. H. Rep. No. 1514, 78th Cong., 2d sess., pp. 1-2:

The Committee on Military Affairs, to whom was referred the bill (H. R. 4733) to amend section 541 of the Soldiers' and Sailors' Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass with the following amendment:

Strike out all after the enacting clause and insert the following language:

[Here follows Sec. 514, as amended by the Act of July 3, 1944, *supra*.]

GENERAL COMMENT

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the serv-

ice from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.

APPENDIX G

2. Act of July 3, 1944, c. 397, 58 Stat. 722:

* * * That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is amended to read as follows.*

"Sec. 514. (1) For the purposes of taxation in respect of any person, or of his *personal* property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation

*For the Court's convenience, we have italicized the provisions of Section 514 which were added to it by the 1944 Act. In other words, the unitalicized portions constitute Section 514 as it was enacted in 1942 and as it stood prior to the amendments made by the 1944 Act.

in respect of the *personal* property income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, *and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.* This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to *October 6, 1942.*

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise re-

quired by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

(50 U. S. C. App., 1946 ed., Sec. 574.)

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.

(50 U. S. C. App., 1946 ed., Sec. 574 note.)

WAR DEPARTMENT
ARMY SERVICE FORCES

TRANSMITTAL SHEET

TO	Office of The Judge Advocate General, Rm. 2057 Munitions Building (Service, division, or organization) (Location)
DESCRIPTION OF ATTACHED COMMUNICATION	(Branch or unit) (Attention) (Originator) (Addressee) (Date) H. R. 4733 - amend sec. 514 of Soldiers' & Sailors' Relief Act.' (Subject) (File No.)
FROM	Military Personnel Div., ASF Rm. 4B-470 Pentagon WDP - 4387 (Service, division, or organization) (Location) (Telephone)

SPGAL/011 Gen (6 May 44)-124 6 May 1944

1. There is attached a copy of H. R. 4733, a bill "To amend section 514 of the Soldiers' and Sailors' Relief Act", upon which the views of the War Department have been requested by the Chairman, House Military Affairs Committee.

2. Your remarks and recommendations are requested, particularly as to any changes in existing law that would be accomplished by the enactment of the attached bill.

RUSSEL B. REYNOLDS
Brigadier General, General Staff Corps
Director, Military Personnel Division

Incl.
~~cy H.R. 4733.~~

C. S. Alston

C. S. ALSTON
Major, Infantry
Asst. Exec., Military Personnel Division

APPENDIX H
PART I
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W. D., A. G. O. Form No. 0105
April 7, 1943

U. S. GOVERNMENT PRINTING OFFICE O—619134

78TH CONGRESS
2D SESSION

H. R. 4733

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1944

Mr. SPARKMAN introduced the following bill; which was referred to the Committee on Military Affairs

A BILL

To amend section 514 of the Soldiers' and Sailors' Relief Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is hereby amended to read as follows:

"SEC. 514. (1) The income, gross receipts, and personal property, tangible or intangible (including automotive vehicles), of any person in the military service shall not be subject to taxation by any State, Territory, possession, political subdivision thereof, or the District of Columbia, by reason of (a)

his temporary residence, (b) receipt of income or gross receipts, or (c) the temporary location of personal property, within a State, Territory, possession, political subdivision thereof, or the District of Columbia: *Provided*, That nothing contained in this section shall prevent the State, Territory, possession, political subdivision thereof, or the District of Columbia, wherein a person in the military service resided or was domiciled prior to the time when he first acquired a temporary residence, as defined herein, from imposing a tax upon the income, gross receipts, or personal property of such persons, if it otherwise has jurisdiction to impose such tax: *And provided further*, That nothing contained in this section shall prevent a State, Territory, possession, political subdivision thereof, or the District of Columbia from imposing taxes upon income or gross receipts, other than compensation for military service, derived from sources therein, nor from imposing a tax on personal property situated therein other than at a temporary location, as herein defined.

"(2) After the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, no State, Territory, possession, political subdivision thereof, or the District of Columbia shall make claim for, collect, or receive from any person in the military service any tax made inapplicable by subsection (1) hereof and which has accrued subsequent to the declaration of the national emergency made

by the President on September 8, 1939; but the refund of taxes collected or received prior to such effective date shall not be required by the provisions of this section.

"(3) This section shall not be deemed in any manner to authorize any State, Territory, possession, political subdivision thereof, or the District of Columbia to impose any tax upon personal property located in or on any Federal area.

"(4) (a) When after September 8, 1939, a person in the military service has changed his physical residence in order to comply with military orders he shall be deemed to have acquired a 'temporary residence'; except that for purposes of taxation by a State, Territory, possession, or the District of Columbia he shall be deemed to have acquired a 'temporary residence' only if he shall have moved outside the exterior boundaries of such State, Territory, possession, or the District of Columbia.

"(b) Personal property shall be deemed to have a 'temporary location' when a person in the military service has such property at his 'temporary residence' or when, on changing from one 'temporary residence' to another, he leaves it at a previous 'temporary residence'.

"(c) The term 'Federal area' means any lands or premises owned or acquired by or for the use of the United States or any department, establishment, or agency of the United States."

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PART II

HEADQUARTERS ARMY SERVICE FORCES
Office of the Judge Advocate General
Washington 25

18 May 1944

SPJGT 1944/4613

MEMORANDUM FOR Director, Military Personnel Division, A.S.F.

Attention: Lieutenant Colonel W. D. Partlow, J.A.G.D.
Subject: Proposed Amendment to Section 514 of the Soldiers' and Sailors' Civil Relief Act by H.R. 4733.

1. By transmittal sheet dated 6 May 1944 (SPGAL/011 Gen (6 May 44) - 124), there was referred to this office a copy of H.R. 4733, a bill to amend section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 as amended, with a request for remarks and recommendations particularly as to any changes in existing law that would be accomplished by the enactment of said bill.

2. Both section 514 as it now exists and H.R. 4733 are designed to prevent multiple taxation of military personnel serving within various taxing jurisdictions as the result of military or naval orders. As presently worded section 514 primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in section 514 prevents the state of "temporary residence" from taxing tangible personal property actually located in such state, so long as the tax does not depend on residence or domicile. A few states, however, have taken the position that the tangible per-

sonal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation. H.R. 4733 would prevent multiple taxation of such property (including motor vehicles) as well as reach essentially the same result with respect to income taxation as section 514.

3. Subsection (2) of H.R. 4733 provides that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (6 October 1942) no state shall collect taxes made inapplicable by subsection (1) and which accrued subsequent to 8 September 1939. It is provided, however, that refunds of taxes collected prior to such effective date (6 October 1942) are not required. Thus, the proposed bill does not require refunds of taxes collected prior to 6 October 1942, but nothing is provided concerning taxes collected after 6 October 1942. By implication, therefore, taxes covered by H.R. 4733 which are not covered by section 514, as now worded, would have to be refunded if collected after 6 October 1942. It is believed that this feature of H.R. 4733, being retroactive, would create some confusion and generate some opposition.

4. While H.R. 4733 achieves essentially the same result as section 514 with respect to income taxation, there is one important difference. An actual change of physical residence *after 8 September 1939* outside of the taxing jurisdiction in which a person was resident or domiciled on that date is a prerequisite under the proposed bill to the relief available. By one construction of the present section 514, however, such actual change of physical residence is not required. For example, if an Army officer domiciled in California was stationed in Maryland on 8 September 1939 and lived

there, he would have been in Maryland by reason of compliance with military orders. If he continued to live in Maryland after 8 September 1939, under section 514 he would not be considered to be domiciled in or to be a resident of Maryland for income tax purposes no matter how long he remained there under military orders and his military income would not be deemed to be earned there. Under the proposed amendment, however, since there was no change of physical residence, such officer would be considered a resident of Maryland for tax purposes if he continued to reside there at least six months as under the Maryland income tax law a person is deemed a resident if he maintains a place of abode there for at least six months. Moreover, military income received by him while still residing in Maryland would be considered to be income earned there. Therefore, under this construction of section 514, certain tax advantages are afforded military personnel which are not afforded by the proposed amendment.

5. H.R. 4733 is practically identical with the draft of a bill recommended by this office in 1942 at the time when consideration was being given to amending the Soldiers' and Sailors' Civil Relief Act of 1940. As an initial approach to the problem H.R. 4733 is perhaps preferable to section 514. That, however, is not the situation now. Section 514 was enacted 6 October 1942, and since that date has been construed and interpreted by many state officials. So far as this office is aware, the effect given to section 514 in practical operation has been generally satisfactory within the limits of the section. The scope of section 514 should be enlarged to grant relief from tax on tangible personal property, in-

cluding automobile licenses, but H.R. 4733, instead of fitting into the framework of section 514 by supplying an amendment to accomplish the desired ends, substitutes an entirely new section based upon a different approach to the problem. In the opinion of this office it would be preferable to achieve the desired result by gearing the requisite amendments to the section as presently constituted. To enact a completely new section which approaches the problem differently may upset interpretations and practical arrangements which have been set up over the past one and one half years with respect to other taxes.

6. There is attached hereto a suggested draft of an amendment to section 514, which it is believed will accomplish essentially the same result as H.R. 4733, but within the framework of the present section 514. The underscored portions of the suggested draft indicate additions to the present section 514. The changes made extend the benefits of the section to include taxes on tangible personal property, including licenses on automobiles. In the case of personal property used in or arising from a trade or business, however, it is provided that nothing contained in the section shall prevent taxation by any state or other taxing authority if it otherwise has jurisdiction. This was deemed necessary to cover the situation where a member of the armed forces is domiciled in one state, owns a business in another state, and is stationed in a third state or in the state where he has his business. Under the suggested draft the state where the person is stationed (if it is not the state of domicile or residence) would not have jurisdiction to tax personal property of such person but the suggested draft, as is true of section 514, neither

prevent the state of domicile or residence from taxing personal property of such person nor prevents a state from taxing personal property used in or arising from the conduct of a trade or business, if such state otherwise has jurisdiction to tax. The operation of the section as to the other taxes would, under the suggested draft, continue as previously.

7. Attention is directed to the fact that "personal property" is defined to include motor vehicles and that the term "taxation" is defined to include licenses imposed in respect of motor vehicles or the use thereof provided that the license "required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid." Note that this proviso omits reference to payment to a "political subdivision of any of the foregoing"; this was done advisedly as it was believed that a person in the military service should only be required to pay the *state* license in his state of domicile or residence as a prerequisite to being freed from the burden of paying automobile license taxes where he is stationed.

8. It should be noted that while the suggested draft provides, as does the present section 514, that the section is effective as of 8 September 1939, it does not require the crediting or refunding of taxes in respect of *tangible* personal property paid prior to the date of enactment of the new amendments or the crediting or refunding of any other tax paid prior to 6 October 1942. It is believed that this provision remedies the defect noted above in H.R. 4733 concerning the refunding of personal property taxes paid after 6 October 1942. In

the same connection attention is called to the fact that since the suggested draft does not prevent taxation by a state or other taxing jurisdiction of personal property used in or arising from a trade or business, if it otherwise has jurisdiction, taxes paid in respect of such property are not refundable.

For The Judge Advocate General:

(Signed) BERRYMAN GREEN
Berryman Green,
Lt. Col., J.A.G.D.,
Chief of Tax Division.

2 Incls.
Incl. 1 - Draft of proposed amendment to sec. 514, Soldiers' and Sailors' Relief Act.
Incl. 2 - T/S MPD,ASF, 6 May 44, w/incl.

BILL

~~DRAFT OF PROPOSED AMENDMENT~~ AMEND

TO SECTION 514 OF SOLDIERS' AND SAILORS' CIVIL RELIEF ACT.

Be it enacted, etc. ——— to read as follows:

" Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This

Incl. 1

section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of ~~the~~ its enactment ~~of (HERE INSERT TITLE OF ACT MAKING THESE AMENDMENTS) nor the crediting or refunding of any other tax~~ paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

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Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax

PART III

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SPGAL/011 Gen (3 May 44)-124.

JUN 13 1944

Honorable Andrew J. May,
Chairman, Committee on Military Affairs,
House of Representatives.

Dear Mr. May:

The War Department has no objection to the enactment of legislation to accomplish the purpose of H. R. 4733, a bill "To amend section 514 of the Soldiers' and Sailors' Relief Act".

The bill is practically identical to a proposed amendment of Article V of the Soldiers' and Sailors' Civil Relief Act of 1940 contained in section 17 of H. R. 7029, Seventy-seventh Congress, and is designed to amend section 514 of that Act, as added by section 17 of the Act of October 6, 1942 (56 Stat. 769, 777), so as to prevent multiple taxation of the personal property of military personnel by the various states.

As presently worded, section 514 of the Act primarily affects taxes in respect of income and other taxes based on residence or domicile. Nothing in that section prevents the state of "temporary residence" from taxing tangible personal property actually located in such state, so long as the tax does not depend on residence or domicile. A few states, however, have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdictions does not acquire a situs for taxation.

Although the bill, H. R. 4733, is preferable to section 514 of the Act as an initial approach to the problem of the multiple taxation of military personnel present in various states in compliance with military orders, it is felt that it would be preferable at this time to achieve the desired result by gearing the required amendments into the framework of that section as presently constituted. The effect given such section has been generally satisfactory within its limits, and to enact at this time a completely new section which approaches the problem differently may upset interpretations and practical arrangements which have been set up over the past one and one-half years with respect to other taxes.

There is inclosed a draft of bill in harmony with the foregoing which the War Department recommends be substituted for the bill H. R. 4733. It is believed that such substitute draft will accomplish essentially the same result as H. R. 4733, but within the framework of existing law. It will be noted that "personal property" is defined therein to include motor vehicles and that the term "taxation" is defined to include licenses imposed in respect of motor vehicles or the use thereof provided that the license "required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid". The substitute bill would not be applicable, however, to personal property used in or arising from a trade or business, and would not require the refunding of taxes in respect of tangible personal property paid prior to the date of enactment of the bill.

The proposed legislation would not result in any additional cost to the Government.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

(Sgd.) HENRY L. STIMSON
Secretary of War.

Incl.
Draft of Bill.

A BILL
To amend section 514 of the Soldiers' and Sailors' Civil Relief Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179), as added by the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 (56 Stat. 769), is hereby amended to read as follows:

"Sec. 514. (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resi-

dent of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, political subdivision, or District: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

"(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect of motor vehicles or the use thereof, provided that the license, fee or excise required by the State, Territory, possession or District of Columbia of which the person is a resident or in which he is domiciled has been paid."

Sec. 2. Nothing contained in this Act shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees or excises imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment.